

To: Mayor & City Council
Through: City Manager

Agenda Item Number 18b
Meeting Date: 10/18/01

SUBJECT: Eisendrath Agreement

PREPARED BY: C. Brad Woodford, City Attorney (350-8229)

REVIEWED BY: C. Brad Woodford, City Attorney (350-8229)

BRIEF: Request approval of a negotiated agreement to trade approximately one-third of the City- owned property south of Rio Salado Drive between Hardy and Priest for the Eisendrath property.

COMMENTS: **EISENDRATH HOUSE (0709-01)** A negotiated agreement to trade approximately one-third of the City-owned property south of Rio Salado Drive between Hardy and Priest for the Eisendrath property along College Avenue adjacent to Papago Park. The trade is the appraised value and includes an option for the purchase of the balance of City-owned property over a period of four years.

Document Name: (20011018casg01) Supporting Documents: Yes.

SUMMARY: Over the last several years the City has negotiated for the purchase of the Eisendrath property in order that it can be added to our parks (Canal Park and Papago Park). The attached agreement sets forth the terms for a trade of City-owned property located between Hardy Road and Priest Drive south of Rio Salado for the Eisendrath property at appraised values and in addition an option to the owner of the Eisendrath property to purchase the balance of the City-owned property over a period of not more than four years in two additional pieces. This transaction will allow the City to achieve two goals by acquiring the Eisendrath property for park purposes and achieve additional development adjacent to the Town Lake.

RECOMMENDATION: That the Mayor be authorized to execute the Agreement for Trade and Options.

FISCAL NOTE: In addition to the Eisendrath property, the City will receive option payments in excess of \$100,000 per year and ultimate sale of the balance of the City property at appraised value.

**AGREEMENT FOR TRADE OF REAL PROPERTY
AND OPTION TO PURCHASE REAL PROPERTY**

THIS AGREEMENT FOR TRADE OF REAL PROPERTY AND OPTION TO PURCHASE REAL PROPERTY is dated as of the _____ day of _____, 2001 (the "date of this Agreement"), and together with the First American Title Insurance Company ("Escrow Agent") printed form of Escrow Instructions, the form of which is modified and attached hereto as **Exhibit A** ("Printed Escrow Instructions"), shall serve as escrow instructions to the Escrow Agent and as an agreement of trade, purchase and sale between the Buyer and Seller (collectively referred to below variously as the "Purchase Agreement", "Agreement" or "Escrow Instructions", and all such references shall have the same meaning and shall also include any subsequent amendment hereof). "Opening of Escrow" shall occur when Escrow Agent accepts these Escrow Instructions as provided at the end of this Agreement and opens the escrow for this Agreement (the "Escrow"). Escrow Agent shall confirm the date of Opening of Escrow by a letter to the parties.

1. TRADE PROVISIONS.

1.1 Agreement and Property. Upon and subject to the terms, conditions and provisions set forth herein, City of Tempe, an Arizona municipal corporation ("Seller"), and TWM, LLC, an Arizona limited liability company ("Buyer") agree to trade the following described properties:

A. Buyer's Trade Property. By the Close of Escrow, Buyer will own free and clear fee title or be legally able to transfer free and clear title to that certain real property described on **Exhibit B** attached hereto, hereinafter referred to as the "Eisendrath Property" consisting of 9.339 acres (406,807 square feet) located adjacent to College Avenue, north of Curry Road in the City of Tempe. Buyer will trade the Eisendrath Property except for the "Exception Parcel" described in **Exhibit B-1** hereto and will cause the Exception Parcel to be deeded by Gift Deed to Seller in exchange for Parcel 1 or 3 of Seller's property, hereinafter referred to as "Parcel 1 or 3 of the Rio Salado Property" as described below. There is a residential dwelling lying within the Exception Parcel of the Eisendrath Property. Buyer warrants to Seller that at the Close of Escrow, the Eisendrath Property will be vacant, with no oral or written, recorded or unrecorded, leases or claims to the right of occupancy thereof. The Eisendrath Property has been appraised and the Seller agrees to accept Buyer's interest therein for the agreed upon trade value of \$1,480,777. Thus, in addition to the trade of the property, Buyer will make a cash payment to Seller at Closing so that the total consideration for the trade will equal the Trade Price of Parcel 1 or Parcel 3 of the Rio Salado Property (as hereinafter stated and defined) minus the sum of \$1,480,777. Buyer shall cause the Eisendrath Property to be conveyed to Seller, free and clear of all monetary encumbrances not caused or consented to by Seller, by special warranty deed in the form attached hereto as **Exhibit J** ("Special Warranty Deed") and by a Gift Deed for the Exception Parcel thereof (which Seller agrees to accept as a gift from the Grantor thereof), subject only to those exceptions of record caused or agreed to by Seller, which shall include those more particularly described in **Exhibit C** attached hereto. Without limiting the foregoing, Buyer shall pay all taxes and assessments on the Eisendrath Property to the Close of Escrow.

B. Seller's Property. Seller is the fee title owner of Parcel 1 of the Rio Salado Property more particularly described on **Exhibit D** attached hereto. Parcel 1 of the Rio Salado Property is vacant real property consisting of 4.86 acres (211,827 square feet) located adjacent to Rio Salado Drive and west of Hardy Drive in the City of Tempe. Parcel 1 of the Rio Salado Property has been appraised at value of \$7.25 per square foot which represents the agreed upon trade/purchase price (\$1,535,746) (the "Parcel 1 Trade Price") between Buyer and Seller. Seller is fee title owner of Parcel 2 of the Rio Salado Property more particularly described in **Exhibit E** attached hereto. Parcel 2 of the Rio Salado Property is vacant real property consisting of 5.73 acres (249,603 square feet) and is located adjacent to Parcel 1 and immediately to the west of Parcel 1 of the Rio Salado Property. Parcel 2 of the Rio Salado Property has been appraised at value of \$7.25 per square foot which represents the agreed upon purchase price (\$1,809,621) (the "Parcel 2 Purchase Price") between Buyer and Seller. Seller is fee title owner of Parcel 3 of the Rio Salado Property more particularly described in **Exhibit F** attached hereto. Parcel 3 of the Rio Salado Property is vacant real property consisting of 5.86 acres (255,160 square feet) and is located adjacent to and immediately west of Parcel 2 of the Rio Salado Property. Parcel 3 of the Rio Salado Property has been appraised at value of \$7.25 per square foot which represents the agreed upon trade/purchase price (\$1,849,910) (the "Parcel 3 Trade/Purchase Price") between Buyer and Seller.

At Close of Escrow, Seller will trade Parcel 1 or 3 of the Rio Salado Property to Buyer (as requested by Buyer prior to Closing) in exchange for the Eisendrath Property and monies as described herein. Seller shall convey Parcel 1 or 3 (as requested by Buyer prior to Closing) of the Rio Salado Property to Buyer, free and clear of all monetary encumbrances not caused or consented to by Buyer, by Special Warranty Deed subject only to those exceptions of record caused or agreed to by Buyer, which shall include those more particularly described in **Exhibit G** attached hereto.

C. Contingency. The Closing (defined below) of the foregoing trade between Seller and Buyer is contingent upon approval of this Agreement by the Tempe City Council, the parties approval of Phase I Environmental Assessments as provided in Paragraph 5.11.2 hereof and of Buyer's approval of an ALTA Survey as provided in Paragraph 5.11.3 hereof. Buyer acknowledges that, pursuant to the statutes of the State of Arizona, the Seller is a political subdivision which is divided into many different operating units of varying degrees of authority, and the unit initially authorizing this Agreement is not the unit that finally approves this Agreement or any such applications as described above.

2. **CLOSE OF ESCROW; CONDITIONS PRECEDENT.** With respect to the trade of property between Seller and Buyer, the following shall be conditions precedent ("Conditions Precedent") to the Close of Escrow (defined below): (i) the requirements pursuant to this Agreement and pursuant to the Owner's Policy (defined below) have been performed, all closing documents and funds required hereunder have been delivered into Escrow, properly executed and notarized by the appropriate parties hereto, including the Escrow Agent, as the case may be, and the Closing (defined below) has occurred; (ii) the Escrow Agent has complied with all of its duties under this Agreement and, acting in its capacity as title insurer, is unconditionally committed and obligated to issue to Buyer and Seller, as the case may be, the title insurance policy described below for each ("Owner's Policy") in accordance with the title commitments attached hereto with no change to the Schedule B Exceptions, unless otherwise approved by this Agreement or any amendment to such commitments or exceptions have been approved in writing by the prospective insured party, but removing from the commitments in all events any reservation or exception for unrecorded leases or

parties in possession, and such policy (or the binding commitment therefor) will insure and be issued as of the date and time of recordation of the deeds conveying the Eisendrath property to Seller and Parcel 1 or 3 of the Rio Salado Property to Buyer, as the case may be, so that there is no gap in coverage and such date and time are the "effective date" of each Owner's Policy; and (iii) all funds required to be paid hereunder have been properly delivered to the Escrow Agent and are available for immediate distribution by Escrow Agent from the Escrow in accordance with the terms and provisions of this Agreement.

2.1 Closing Date. Subject to the terms of this Agreement, Escrow shall close (the "Closing") on or before February 1, 2002 subject to the contingency of obtaining the Final Approvals as described in Paragraph 1 (C) above. The Closing shall consist of the Conditions Precedent as described above. The recording of the deeds (the "Close of Escrow") shall take place as soon after the Closing as practicable and be deemed to have occurred on the date the deeds for the trade properties have been properly delivered for recording to the Maricopa County Recorder by the Escrow Agent, as shown by the date of recording on such deeds.

2.2. Seller Deposits. On or before the Closing, Seller shall Deposit (or cause to be deposited) the following:

A. Special Warranty Deed for Parcel 1 or 3 of the Rio Salado Property, subject to the matters described in **Exhibit G** or **Exhibit I** (as appropriate) attached hereto and as otherwise may be authorized by this Agreement or approved by Buyer in writing.

B. Certified copy of an ordinance of the City of Tempe authorizing the trade of Parcel 1 or 3 of the Rio Salado Property, if such ordinance is issued.

C. Seller's request to Escrow Agent that Escrow Agent, acting in its capacity as title insurer, issue its binding commitment to issue a policy of title insurance to Buyer in accordance with this Paragraph 2 above, and also providing for standard coverage, insuring that Buyer has acquired fee title to the real property in the amount of the Parcel 1 or Parcel 3 Trade Price (as appropriate) subject only to the title exceptions approved by Buyer pursuant to **Exhibit G** or **Exhibit I** (as appropriate) and the normal printed exceptions, exclusions and conditions customarily set forth in Escrow Agent's preprinted title policy form, except as any of the foregoing may be modified by this Agreement. Seller shall pay the premium for a Standard Coverage Policy and Buyer shall pay all other premiums and charges for any other coverage or endorsements Buyer may desire; however, in no event may Buyer delay the Closing for same, nor shall any such requests of the title insurer by Buyer be a condition precedent to the Closing of this transaction.

D. Seller shall deposit (or cause to be deposited), by cashier's check acceptable to Escrow Agent, by wire transfer of immediately available funds, or by any other means acceptable to Escrow Agent, the amount set forth in the Settlement Statement of Escrow Agent, reasonably approved by the parties (consistent with this Agreement), to be paid by Seller at Close of Escrow. Such amounts shall include Escrow Agent's customary charges and fees in connection with the Escrow which are not specifically described herein, such as recording and escrow fees.

2.3 Buyer Deposits. On or before Closing, Buyer shall Deposit (or cause to be deposited) the following:

A. Special Warranty Deed and a Gift Deed for the Eisendrath Property, subject to the matters described in **Exhibit C** attached hereto and as otherwise may be authorized by this Agreement or approved by Seller in writing.

B. The sum of the trade balance equal of to the difference between the appropriate Parcel 1 or Parcel 3 Trade Price and the Eisendrath Property Trade Value..

C. Buyer's request to Escrow Agent that Escrow Agent, acting in its capacity as title insurer, issue its binding commitment to issue a policy of title insurance to Seller in accordance with this Paragraph 2 above and also providing for standard coverage, insuring that Seller has acquired fee title to the real property in the amount of \$1,480,777 subject only to the title exceptions approved by Seller pursuant to **Exhibit C** and the normal printed exceptions, exclusions and conditions customarily set forth in Escrow Agent's preprinted title policy form, except as any of the foregoing may be modified by this Agreement. Buyer shall pay the premium for a Standard Coverage Policy and Seller shall pay all other premiums and charges for any other coverage or endorsements Seller may desire; however, in no event may Seller delay the Closing for same, nor shall any such requests of the title insurer by Seller be a condition precedent to the Closing of this transaction.

D. Buyer shall deposit (or cause to be deposited), by cashier's check acceptable to Escrow Agent or by wire transfer of immediately available funds, the trade balance described above and any other amount required to be deposited herein or set forth in the Settlement Statement of Escrow Agent, reasonably approved by the parties (consistent with this Agreement), to be paid by Buyer at Close of Escrow. Such amounts shall include Escrow Agent's customary charges and fees in connection with the Escrow which are not specifically described herein, such as recording and escrow fees.

E. Buyer shall deposit the first year's option fees described below.

2.4 General. All payments shall be in United States currency. Buyer and Seller shall execute and deliver any additional documents required under these Instructions or reasonably necessary to consummate the transactions described in this Agreement as provided herein, both prior to and following Close of Escrow. Possession and risk of loss to the property is upon the party owning the property prior to the Close of Escrow, and is transferred to the party receiving and owning the property at the Close of Escrow.

3. OPTIONS TO PURCHASE. Conditioned upon timely Closing of Parcel 1 or 3 of the Rio Salado Property and timely payment of the option fees described below, Seller hereby grants to Buyer the options to purchase Parcels 2 and 1 or 3 of the Rio Salado Property (whichever parcel was not purchased at Close of Escrow) on the terms and conditions listed as follows:

3.1. Parcel 2 of the Rio Salado Property. The option to purchase Parcel 2 of the Rio Salado Property shall be exercised within two years after the date of Close of Escrow of the trade as set forth herein.

3.2. Parcel 3 of Rio Salado Property. The option to purchase Parcel 1 or 3 of the Rio Salado Property (whichever parcel was not purchased at Close of Escrow) shall be exercised within four years after the date of Close of Escrow of the trade as set forth herein.

3.3. Option Fee/Parcel 2.

A. Buyer shall pay to Seller upon Close of Escrow of the trade property, the sum of \$54,228 representing the option fee to purchase Parcel 2 of the Rio Salado Property for a period of one year from the date of Close of Escrow of the trade property.

B. Buyer shall pay directly to Seller outside of Escrow, on or before the expiration of one year after the date of Close of Escrow of the trade property, the sum of \$54,288 representing the second year's option fee for the option to purchase Parcel 2 of the Rio Salado Property during the second year after the date of Close of Escrow of the trade property.

3.4. Option Fee/Parcel 3.

A. Buyer shall deposit in Escrow and pay to Seller at Close of Escrow of the trade property, the sum of \$55,497 representing the first year's option fee for the option to purchase Parcel 1 or 3 of the Rio Salado Property (whichever parcel was not purchased at Close of Escrow) during the period of one year after the date of Close of Escrow of the trade property.

B. Buyer shall pay directly to Seller outside of Escrow, on or before the expiration of one year after the date of Close of Escrow of the trade property, a like sum of \$55,497 representing the second year's option fee for the option to purchase such Parcel 1 or 3 of the Rio Salado Property during the second year after the date of Close of Escrow of the trade property.

C. Buyer shall pay directly to Seller outside of Escrow on or before the expiration of two years after the date of Close of Escrow of the trade property, the sum of \$73,996 representing the third year's option fee for the option to purchase such Parcel 1 or 3 of the Rio Salado Property during the third year after the date of Close of Escrow on the trade property.

D. Buyer shall pay directly to Seller outside of escrow on or before the expiration of three years after the date of Close of Escrow of the trade property, the sum of \$73,996 representing the fourth year's option fee for the option to purchase such Parcel 1 or 3 of the Rio Salado Property during the fourth year after the date of Close of Escrow on the trade property.

3.5. Termination of Option. Buyer's options shall automatically expire and terminate upon (i) Buyer's failure to timely Close upon the trade property transaction herein, (ii) Buyer's failure to pay the option fee price on Parcel 2 and/or Parcel 1 or 3, (the parcel which was not traded) of the Rio Salado Property in a timely manner as set forth herein, or (iii) Buyer's failure to timely exercise the option to purchase and timely close on Parcel 2 and/o Parcel 1 or 3, (the parcel which was not traded) of the Rio Salado Property.

3.5.1 In the event of termination of one or both options, as the case may be, or in the event of option exercise prior to the end of any twelve (12)-month option period, no part of any option fee paid is refundable. As a courtesy to Buyer, Seller will endeavor to send a 10-day or

more written notice to Buyer prior to the due date of any option payments which are due after the Close of Escrow. Such notice is an unrequired courtesy only, and the failure of Seller to send such written notice to Buyer shall not in any manner excuse or delay any option payment or extend the option of Buyer to purchase the remaining parcels of the Rio Salado Property. Timely payment is solely Buyer's responsibility.

3.6. Exercise of Options by Buyer. Provided that Buyer is not in default on any option fee payments as set forth in this Agreement, Buyer's exercise of its option to purchase a parcel shall be made by delivering to Seller in writing a "Notice of Exercise of Option to Purchase" which contains information sufficient to identify this Agreement and the option being exercised; provided that, as a condition precedent to closing the purchase of Parcel 1 or 3 of the Rio Salado Property, Buyer must timely exercise the option to purchase Parcel 2 of the Rio Salado Property and timely close the purchase of same on or before the date it may close the option to purchase Parcel 1 or 3 of the Rio Salado Property, as well as meet all the other requirements relating to the options in this Agreement. Upon receipt from Buyer of a Notice of Exercise of Option to Purchase, Seller and Buyer shall, within 10 days of receipt of the notice, and Seller shall deposit into Escrow, in time for closing, a Special Warranty Deed conveying fee title to Buyer for the parcel for which the option was properly exercised. Buyer shall deposit into Escrow prior to the closing of same, the purchase price for the parcel of the Rio Salado Property for which Buyer is properly exercising its option. Escrow shall close on or before 60 days after the effective date of the Notice of Exercise of Option to Purchase for the optioned property. All terms and conditions of the escrow and purchase shall be the same as set forth in this Agreement for the trade of real property with the necessary exceptions and substitutions of the purchase price, title commitment, terms and other items requiring such treatment.

3.6.1 Seller shall convey Parcel 2 of the Rio Salado Property to Buyer, free and clear of all monetary encumbrances not caused or consented to by Buyer, by Special Warranty Deed subject only to those exceptions of record caused or agreed to by Buyer, which shall include those more particularly described in **Exhibit H** attached hereto.

3.6.2 Seller shall convey Parcel 1 or 3 of the Rio Salado Property to Buyer, free and clear of all monetary encumbrances not caused or consented to by Buyer, by Special Warranty Deed subject only to those exceptions of record caused or agreed to by Buyer, which shall include those more particularly described in **Exhibit C** or **Exhibit I** (as appropriate) attached hereto.

3.7. Purchase Price for Optioned Property. Buyer shall pay to Seller through escrow, the sum of \$1,809,621 (\$7.25 per square foot) for the purchase of Parcel 2 of the Rio Salado Property, \$1,535,745 (\$7.25 per square foot) for the purchase of Parcel 1 of the Rio Salado Property and \$1,849,910 (\$7.25 per square foot) for the purchase Parcel 3 of the Rio Salado Property. No part of any option fee is applicable to the purchase price for either parcel.

3.8. Escrow Closing/Termination of Escrow. In the event that escrow fails to close (because of Buyer's failure to perform) on or before 60 days after the effective date of the Notice of Exercise of Option to Purchase for either Parcel 2 or Parcel 1 or 3 of the Rio Salado Property, unless mutually extended in writing by Buyer and Seller, the escrow shall terminate and all documents or monies deposited into such escrow by either Buyer or Seller shall be returned to

them by Escrow Agent (less any fees of Escrow Agent), and the escrowed option and any remaining option shall both automatically terminate.

4. **DEFAULT.** In the event any covenant, warranty or representation herein of a party is breached or inaccurate, or a party at any time fails to timely and properly comply with or perform any of the covenants, conditions, agreements or obligations required to be performed by said party hereunder, then, except for the timely payment of any monies into any escrow hereunder or the timely payment of any option fee directly to Seller (for either of which there shall be no notice or cure period required), said party failing to perform shall be entitled, after receipt of written notice from the other party setting forth the specific failure to perform, defect, or other problem resulting from said party's failure to comply with the terms and provisions hereunder, five (5) days after the date of delivery of said notice in which to cure the failure to perform, defect, inaccuracy or other problem and if the same is not cured on or before the expiration of said cure period, or there is no cure period, then an event of default shall have occurred and the non-defaulting party shall be entitled to all rights and remedies available at law or in equity, including specific performance and damages.

5. **GENERAL.**

5.1 **Successor Benefits; No Assignment.** These Escrow Instructions shall be binding upon and inure to the benefit of the heirs, successors, permitted assigns and legally appointed representatives of the parties hereto except as specifically provided herein to the contrary. Except to an entity in which Thomas W. Meissner has a fifty percent interest, Buyer shall not transfer, assign or convey any rights in, to or under this Agreement without Seller's prior written consent in its sole and absolute discretion, which consent can be withheld for any reason or no reason. The parties acknowledge the reasonableness of this provision because one consideration to Seller for selling and optioning the properties at the purchase prices and option fees stated herein is the identity of Buyer. Any assignment in violation of this paragraph is void at the option of Seller in its sole and absolute discretion at any time thereafter.

5.2 **Time of Essence.** Time is of the essence in connection with the performance of these Escrow Instructions.

5.3 **Severability.** If any provision in these Escrow Instructions or any application thereof shall be invalid or unenforceable, the remainder of these Instructions and any other application of such provision shall not be affected thereby and shall not be rendered invalid or unenforceable.

5.4 **Notices.** Any notices or notice of demands which shall be required or permitted by law or any of the provisions of these Escrow Instructions shall be in writing and shall be deemed delivered and effective when delivered personally (including reputable, recognized courier), or when successfully telecopied to the number shown below (as prima facie evidenced by a fax confirmation printout by sender's fax machine), provided a copy of the communication is mailed to the addressee as soon as practicable thereafter, or upon delivery when sent by United States registered or certified mail, return receipt requested, postage prepaid. Any other written notice actually received by a party shall be deemed adequate notice. Proof of any delivery is upon the sender; however, recognized courier records showing delivery, proper U.S. Mail return receipts,

and signed receipts for delivery shall be deemed prima facie evidence of delivery. All notices and demands shall be delivered, mailed or telecopied, as the case may be, to the addresses or telecopy numbers shown below, addressed to the parties at the names and addresses shown below or such other names, addresses or telecopy numbers as may be indicated by one party to the other party by notice in writing from time to time. The voice telephone numbers below are for the convenience of the parties only.

Seller:

City of Tempe
Richard Oesterle, City Finance Director
City of Tempe
P. O. Box 5002 (Mailing)
Tempe, Arizona 85280
20 East Sixth Street (Delivery)
Tempe, Arizona 85281
Telecopy: (480) 350-8990
Voice: (480) 350-8321

with a copy to:

C. Brad Woodford, Esq.
City Attorney's Office
City of Tempe
140 East Fifth Street, Suite 301
Tempe, Arizona 85281
Telecopy: (480) 350-8645
Voice: (480) 350-8227

Buyer:

TWM, LLC
c/o Thomas W. Meissner
2901 North Central, Suite 200
Phoenix, AZ 85012
Telecopy: (602) 285-5099
Voice: (602) 285-5195

Escrow Agent:

First American Title Insurance Company
Attn: Karen Summers
1030 East Baseline Road, Suite 158
Tempe, AZ 85283
Telecopy: (480) 838-4679
Voice: (480) 897-0392

All notices to a party or to Escrow Agent, shall also be given to the other party or to Escrow Agent as the case may be. The inability to deliver because of a changed address of which no notice was given, or rejection or other refusal to accept any notice, shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any notice to be given by any party hereto may be given by the counsel for such party.

5.5 Inconsistencies. In the event any term or condition of the Printed Escrow Instructions are in any way inconsistent with the other portions of this Agreement (or any subsequent amendment hereto) or any other documents which have been or will be prepared and executed by Buyer and Seller in connection with this transaction, then, in such event, the terms and conditions of the other portions of this Agreement or such other documents shall control, as the case may be.

5.6 Attorneys' Fees. In the event any action shall be instituted by either of the parties hereto against the other for the interpretation or enforcement of any of its rights or remedies in and under these Escrow Instructions (if allowed hereunder), venue and jurisdiction shall be in the courts of Maricopa County, Arizona, to be determined by the court sitting without a jury, and the party in whose favor judgment shall be rendered therein shall be entitled to recover from the other party all reasonable expenses and costs incurred by said prevailing party in said action, including reasonable attorneys' fees fixed by the court. If both parties are awarded relief, such costs, expenses and fees shall be apportioned among the parties hereto in the discretion of the court.

5.7 Counterparts; Entire Agreement. These Escrow Instructions may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. These Escrow Instructions constitute the entire agreement between the parties pertaining to the properties, and they shall supersede all prior agreements and understandings of the parties in connection therewith. No oral agreements or understandings between the parties shall be binding upon them.

5.8 Amendment and Waiver. The parties hereto may by mutual agreement amend these Escrow Instructions in any respect, provided that any such amendment shall be in writing, signed by both parties. No delay in the enforcement hereof by any party shall constitute a waiver or custom of waiver. All waivers shall be in writing and signed by the party to be charged, and the waiver of any condition under these Escrow Instructions shall not constitute a future waiver of said condition or of any other condition.

5.9 Headings; Construction and Governing Law. The headings of the paragraphs herein are for the convenience of the parties only and shall not expand, limit, define, amend, modify or affect the meanings or interpretations of the contents thereof. Reference to a paragraph or a subparagraph includes all of the subparagraphs of either. As the context may require, singular shall include the plural and vice versa, and one form of pronoun or gender shall include any other. These Escrow Instructions are to be performed in the State of Arizona and shall be construed and enforced in accordance with the laws of the State of Arizona.

5.10 Construction. The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or Exhibits hereto.

5.11 Own Due Diligence. Except as may be otherwise specifically provided in this Agreement, each party hereto represents, covenants and warrants to the other that it is entering into this Agreement and will consummate the transactions contemplated hereby in sole reliance upon its own independent judgment and full independent investigation concerning all matters affecting the properties it has the right to acquire hereunder, and not in reliance upon any representation by any person or entity whatsoever. Such investigation and due diligence includes, without limitation, the physical condition of the properties, economic, engineering and development feasibility of the properties, together with the risk that the City of Tempe may impose future requirements in connection with Rio Salado properties or Tempe Town Lake properties that have an impact relating to such matters upon one or more of the properties which are the subject of this Agreement. Each party accepts and assumes all the risks of the foregoing in connection with the properties it has the right to acquire hereunder and, except as may be specifically stated otherwise in this Agreement, acquires any property to be acquired by it "as is, where is," and each party hereby releases the other from all liability, known or unknown, now or in the future, in connection with the matters described in this Paragraph 5.11.

5.11.1 Airport Studies. Without limiting the foregoing and included therein, the City of Phoenix has conducted an air traffic overflight study in connection with that city's Sky Harbor Airport. Periodically and from time to time, at varying heights, flights from that airport can and do fly over the Rio Salado Property parcels which are subject to this Agreement. Without warranty of any kind by Seller and as a courtesy to Buyer, a copy of a summary of certain documents that Seller believes are pertinent in connection with that study is attached hereto as **Exhibit K**. Buyer further represents and warrants that it has, independently, fully investigated the matter and any related issues to its complete satisfaction (including, without limitation, the City of Phoenix study and the documents mentioned in Seller's summary), and is buying and optioning such properties with full knowledge of same, and agrees that Seller makes no representation or warranty whatsoever concerning the effect of such overflights or any issue or consideration relating thereto, and Buyer agrees it is not relying upon any statement of Seller or any of its representatives, agents or employees relating to such issue.

5.11.2 Phase I Assessments. Notwithstanding the foregoing, within thirty days (30) after approval of this Agreement by the Tempe City Council, the Seller (at its expense) shall provide Buyer a Phase I Environmental Assessment relating to the Rio Salado Parcels and Buyer (at its expense) shall provide Seller a Phase I Environmental Assessment relating to the Eisendrath Property. Close of Escrow is conditioned upon both parties approval thereof and the certification thereof to both parties at Close of Escrow. The assessments shall be prepared by a person or entity approved by both parties.

5.11.3 Surveys. Close of Escrow shall be conditioned upon Buyer's approval of an ALTA survey of the Rio Salado Parcels on or before December 3, 2001 obtained by Buyer at his expense.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date specified in the printed Escrow Instructions.

SELLER:
CITY OF TEMPE, a municipal corporation

By: _____
Neil G. Giuliano
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

BUYER:
TWM, LLC, an Arizona limited liability company

By: _____
Its: _____

APPROVED:

FIRST AMERICAN TITLE
INSURANCE COMPANY

By: _____
Its: _____

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FirstRio-EisendrathAgt(3) 10-11-01

SUMMARY OF EXHIBITS

<u>Exhibit A</u>	First American Title Printed Escrow Instructions
<u>Exhibit B</u>	Eisendrath Property Description
<u>Exhibit B-1</u>	Exception Parcel Description
<u>Exhibit C</u>	Eisendrath Property Exceptions
<u>Exhibit D</u>	Parcel 1 of the Rio Salado Property Description
<u>Exhibit E</u>	Parcel 2 of the Rio Salado Property Description
<u>Exhibit F</u>	Parcel 3 of the Rio Salado Property Description
<u>Exhibit G</u>	Parcel 1 of the Rio Salado Property Exceptions
<u>Exhibit H</u>	Parcel 2 of the Rio Salado Property Exceptions
<u>Exhibit I</u>	Parcel 3 of the Rio Salado Property Exceptions
<u>Exhibit J</u>	Form of Special Warranty Deed
<u>Exhibit K</u>	Overflight Summary – Supplied to Buyer



First American Title Insurance Company

1030 East Baseline, Suite 158 • Tempe, Arizona 85283
(480) 897-0392 • Fax: (480) 838-4679

TERMS AND CONDITIONS OF ESCROW

ESCROW NO. 257-740-1273178

1. Escrow Agent is hereby authorized to pay from funds deposited into escrow for said purpose all amounts necessary to procure documents and all other charges and obligations necessary to consummate this transaction. Seller and Buyer grant Escrow Agent a lien on all property and funds deposited in escrow. Seller and Buyer hereby authorize Escrow Agent to reimburse itself for its charges and for all damages or expenses it may incur in connection with the escrow and the performance of Escrow Agent's duties, including costs, damages and attorneys' fees.
2. Escrow Agent is hereby authorized to act upon any statement furnished to Escrow Agent by a lien holder or his agent, without liability or responsibility for the accuracy of such statement. In the event the lender or lien holder demands additional funds after the close of escrow, Seller agrees to deposit with Escrow Agent any additional funds necessary to comply with the lender/lien holder's instructions upon receipt of same from Escrow Agent. Seller acknowledges that any payment in full to a lender must be received by the lender on or before a specific date to avoid further interest accrual; and Seller hereby instructs Escrow Agent to forward payoff funds to the lender by express service of Escrow Agent's choice and to charge Seller any fees for express delivery at close of escrow.
3. Possession of the property, transfer of utilities, and collection of cancellation premiums from the Seller's fire or hazard insurance policy shall be handled by the parties direct and outside of escrow, and Escrow Agent shall have no responsibility with regard thereto.
4. Proration of real property taxes shall be based upon the last available tax statement from the taxing authority.
5. Escrow Agent may resign upon written notice to Seller and Buyer at least ten (10) days prior to the effective date of resignation. If such right to resign is exercised by Escrow Agent, all funds, less Escrow Agent's charges, and all documents shall be returned by Escrow Agent to the party who deposited them into escrow and Escrow Agent shall have no liability hereunder.
6. Any litigation, arbitration or mediation arising out of this transaction in which Escrow Agent is named as a party shall be filed and maintained in the county in which the office of the Escrow Agent handling this transaction is located. In the event of any litigation or arbitration which relates to the duties or actions of Escrow Agent, including any action seeking a declaration of the rights or obligations of any party to this Escrow, the prevailing party or parties in such litigation or arbitration proceeding shall be awarded, in addition to any other available remedy, all expenses, fees and costs, including expert witness fees, and all reasonable attorneys' fees incurred by said prevailing party. The award of costs, fees, expenses, and attorneys' fees shall be determined by the court or arbitrator, and not by a jury, in a separate proceeding.

EXHIBIT A

7. All of the terms and conditions of the Contract and Receipt for Deposit remain the same. However, Seller and Buyer hereby agree that all notices required to be delivered to any party to the contract or to Escrow Agent pursuant to the parties' contract shall be mailed or delivered to all parties and to Escrow Agent in order to constitute notice under the contract.
8. Seller and Buyer hereby agree that at such time as Seller and Buyer deposit into escrow the executed documents, an executed copy of the Settlement Statement and the funds sufficient to close the transaction, Escrow Agent is authorized to close the escrow. By depositing the above-referenced documentation, the following matters shall be deemed to be satisfied, waived, met, or agreed to without further instruction from Seller and Buyer and Seller and Buyer further agree to indemnify, defend, and hold Escrow Agent harmless from, for, and against any and all claims by any persons, including Seller and Buyer, as to the following matters:
- A. All items to be prorated have been submitted to Escrow Agent.
 - B. All repairs, inspections, contingencies, and/or conditions have been completed, met, waived, or satisfied.
 - C. Buyer has received and reviewed the Commitment for Title Insurance issued by First American Title Insurance Company and Buyer approves and accepts all matters as set forth therein.
 - D. Escrow Agent shall not record before the closing date as set forth in the contract.
9. The disclosures required by A.R.S. 11-806.03 from the Seller, if applicable, have been given to the Buyer, and the Seller will deposit the Affidavit with Escrow agent to record.

Dated: October 25, 2000

Escrow No. 257-740-1273178

SELLER(S):

BUYER(S):

CITY OF TEMPE, a Municipal corporation

By: _____
Its: _____

ESCROW AGENT:

First American Title Insurance Company

By: _____
Kaaren Summers, Escrow Officer

EXHIBIT A

EISENDRATH LEGAL DESCRIPTION

LEGAL DESCRIPTION

ALL THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 10, T1N, R4E, G&SRB&M, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 10; THENCE BEARING $S00^{\circ}47'57''W$ ALONG THE NORTH-SOUTH MIDSECTION LINE OF SAID SECTION 10 A DISTANCE OF 1318.73 FEET TO THE 16/10 CORNER OF SAID SECTION 10; THENCE BEARING $S00^{\circ}49'25''W$ ALONG SAID NORTH-SOUTH MIDSECTION LINE A DISTANCE OF 142.48 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING BEARING $S00^{\circ}49'25''W$ ALONG SAID NORTH-SOUTH MIDSECTION LINE A DISTANCE OF 1176.58 FEET TO THE CENTER OF SAID SECTION 10; THENCE BEARING $S89^{\circ}34'03''E$ ALONG THE EAST-WEST MIDSECTION LINE OF SAID SECTION 10 A DISTANCE OF 733.91 FEET; THENCE BEARING $N13^{\circ}15'37''W$ A DISTANCE OF 164.41 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 823.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $37^{\circ}31'49''$ A DISTANCE OF 539.09 FEET TO A POINT OF TANGENCY; THENCE BEARING $N50^{\circ}47'26''W$ A DISTANCE OF 273.70 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 506.88 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $51^{\circ}36'51''$ A DISTANCE OF 456.62 FEET TO A POINT OF TANGENCY AND THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL HAS A GROSS AREA OF 10.580 ACRES AND A NET AREA OF 9.339 ACRES WITH THE EXCLUSION OF THE EASTERLY 33' FOR ROAD RIGHT-OF-WAY.

EXHIBIT “B-1”

EXCEPTION PARCEL

Land Exception: The Land described in the Eisendrath Property is reduced by the exclusion of a parcel (“Exception Parcel”) described as the Northerly 200 feet of the Southerly 360 feet of the Westerly 220 feet of the Land described in the Agreement and an ingress and egress easement 20 feet in width over the existing driveway from College Avenue to the said Northerly 200 feet of the Southerly 360 feet of the Westerly 220 feet.

EXHIBIT “C”

EISENDRATH PROPERTY EXCEPTIONS

1. Taxes for the current year;
2. Non-delinquent liabilities existing or which may arise with respect in the Property by reason of its inclusion within EAST VALLEY INSTITUTE OF TECHNOLOGY DISTRICT;
3. Reservations contained in Patent recorded February 14, 1916 in Book 120 of Deeds, page 319, reading as follows:

“Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of Courts, and there is reserved from the lands hereby granted, a right-of-way thereon for ditches or canals constructed by the authority of the United States.”
4. An easement and rights incident thereto for electric transmission lines over said premises, as set forth in Instrument recorded May 19, 1930 in Book 41 of Miscellaneous, page 395;
5. Maps of Dedication, Roadway for College Avenue, recorded in Book 178 of Maps, page 4 and Letter Correcting Legal Description recorded March 14, 1975 in Docket 11072, page 335;
6. Plat entitled “General Development Plan” recorded in Book 178 of Maps, page 13; and in Book 236 of Maps, page 18, and in Book 315 of Maps, page 39; and
7. An easement and rights incident thereto for roadway, water lines, public utilities and related purposes, as more particularly described in Instrument recorded September 17, 1976 in Docket 11859, page 74.
8. The liabilities and obligations imposed upon said land by reason of: (a) inclusion thereof within the boundaries of the Salt River Project Agricultural Improvement and Power District; (b) membership of the owner thereof in the Salt River Valley Water Users’ Association, an Arizona corporation and (c) the terms of any Water Right Application made under the reclamation laws of the United States for the purpose of obtaining water rights for said land. (All assessments due and payable are paid.)
9. Water rights, claims or title to water, whether or not the matters excepted are shown by public records.
10. Underground power easement to Salt River Project by instrument dated July 31, 2001.

EXHIBIT "D"

LEGAL DESCRIPTION PARCEL 1

A portion of the Northwest Quarter of Section 16, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

Commencing at the Center of said Section 16;

Thence North $00^{\circ} 48' 26''$ West along the North/South midsection line of said Section 16, 40.00 feet;

Thence South $89^{\circ} 41' 31''$ West along a line parallel with and 40.00 feet North of the East/West midsection line of said Section 16, 464.00 feet to the Southeast corner of Lot 5, State Plat 12 Amended, according to Book 69 of Maps, Page 38, Maricopa County Recorder; said point also being the Point of Beginning;

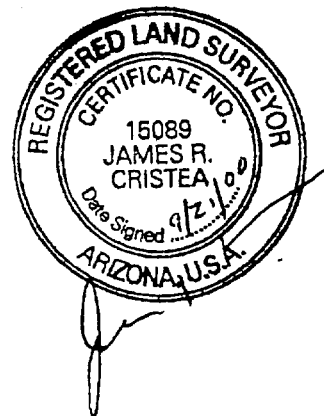
Thence continuing South $89^{\circ} 41' 31''$ West, 500 feet to the Southwest corner of Lot 9 of said State Plat 12;

Thence North $00^{\circ} 43' 29''$ West along the West line of said Lot 9 and its Northerly prolongation, 438.65 feet to a point on a curve, concave to the North, and having a radius of 1210.92 feet; said point also being on the Southerly right of way line of Rio Salado Parkway as described in Document number 89-023644, Maricopa County Recorder, and from which point a radial line bears North $10^{\circ} 58' 45''$ East;

Thence Easterly and to the left along the arc of said curve and said Southerly right of way 502.94 feet through a central angle of $23^{\circ} 47' 49''$, and to which point a radial line bears South $12^{\circ} 49' 04''$ East;

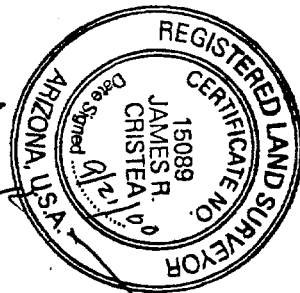
Thence departing said curve and said right of way, South $00^{\circ} 48' 37''$ East along the East line of said Lot 5, and its Northerly prolongation, 443.98 feet to the Point of Beginning.

Said parcel contains 4.86 acres.



LOTS 5 THRU 19 AND PORTIONS OF 2ND AVENUE
STATE PLAT 12 AMENDED, BOOK 69, PAGE 38
AND PART OF SECTION 16, T1N, R4E G.A.S.R.B. & M.
MARICOPA COUNTY, ARIZONA

11 THIS IS A BOUNDARY SURVEY ONLY. IT DOES NOT SHOW
12 THE EXHIBITION OF ANY RIGHTS OR INTERESTS THEREIN.
13 BASED ON ORDINANCE NO. 72, THE CENTERLINE OF THE ROAD
14 HEREIN IS NOT THE CONSTRUCTION CENTERLINE OF THE DEDICATED
15 ALLOCATED PORTION OF THE STATE HIGHWAY SYSTEM.
16 * * * INDICATES * * * HEREON WITH TIG 15089,
17 SECOND DISTRICT USED FROM CENTER OF SECTION TO
18 SET LINE OF LOT 15 CORNER WITH PREVIOUSLY APPROVED
19 EASEMENT. SEE PLAT ON STATE PLAT #12, IS INCORRECT.
20 PLEASE REFER TO CORNER POINT ON STATE BOOK #2, PAGE 48.
21 THIS HAS LED TO SOME LAYOUT FOR CORNERS IMPROPERLY SET
22 OUT TO INCORRECT POSITION.

[illegible]

1) RESULTS OF SURVEY BY DIBBLE AND ASSOCIATES
RECORDED IN BOOK 27, PAGE 26 W.C.R.
2) EXCHANGE, 88-12 OF DEVELOPMENT RIGHT OF WAY FOR
60 ACRES PARKWAY AS RECORDED IN M.C.R. DOCUMENT
83-1
3) SITE PLAN FOR "GARDENS MINI-STORAGE" CITY OF TEMPE
RECORDED (UNDER 45)
4) SITE PLAN 12-45 RECORDED IN BOOK 59, PAGE 38 W.C.R.
5) STATE PLAN 9-45 RECORDED IN BOOK 23, PAGE 48 W.C.R.

THIS SURVEY WAS PERFORMED DURING THE MONTH OF AUGUST, 2000. ALL THE MONUMENTS SHOWN HAVE BEEN SET.

DEPARTMENT OF PUBLIC WORKS CITY OF TENNESSEE DIVISION OF ENGINEERING P.O. BOX 5002 TENN. 37202-0502	
DATE OF BIDDING 02/06/01 DRAWING NO. 04049- JRC CHECKED BY 04049- JRC SCALE 1"=120'	DESCRIPTION REPAIRS TO SURVEY A PORTION OF STATE PLAT 12 SHEET 1 OF 1
BIDDING DATE 9/5/00 PROJECT NO. N/A	

EXHIBIT D-1

EXHIBIT "E"

LEGAL DESCRIPTION PARCEL 2

A portion of the Northwest Quarter of Section 16, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

Commencing at the Center of said Section 16;

Thence North $00^{\circ} 48' 26''$ West along the North/South midsection line of said Section 16, 40.00 feet;

Thence South $89^{\circ} 41' 31''$ West along a line parallel with and 40.00 feet North of the East/West midsection line of said Section 16, 964.00 feet to the Southeast corner of Lot 10, State Plat 12 Amended, according to Book 69 of Maps, Page 38, Maricopa County Recorder; said point also being the Point of Beginning;

Thence continuing South $89^{\circ} 41' 31''$ West, 371.68 feet;

Thence South $89^{\circ} 41' 52''$ West along a line parallel with and 40.00 feet North of the East/West midsection line of said Section 16, 128.32 feet to the Southwest corner of Lot 14 of said State Plat 12;

Thence North $00^{\circ} 40' 29''$ West along the West line of said Lot 14, 547.06 feet to a point on a curve, concave to the South, and having a radius of 889.93 feet; said point also being on the Southerly right of way line of Rio Salado Parkway as described in Document number 89-023644, Maricopa County Recorder, and from which point a radial line bears South $2^{\circ} 21' 51''$ West;

Thence Easterly and to the right along the arc of said curve and said Southerly right of way, 185.56 feet through a central angle of $11^{\circ} 56' 49''$, and to which point a radial line bears North $14^{\circ} 18' 40''$ East;

Thence continuing along said Southerly right of way, South $75^{\circ} 41' 20''$ East, 256.89 feet to the beginning of a curve, concave to the North, and having a radius of 1210.92 feet, and from which point a radial line bears North $14^{\circ} 18' 40''$ East;

Thence Easterly and to the left along the arc of said curve and said Southerly right of way, 70.42 feet through a central angle of $3^{\circ} 19' 55''$, and to which point a radial line bears South $10^{\circ} 58' 45''$ West;

Thence departing said curve and said right of way, South $00^{\circ} 43' 29''$ East along the East line of said Lot 10, 438.65 feet to the Point of Beginning.

Said parcel contains 5.73 acres



LOTS 5 THRU 19 AND PORTIONS OF 2ND AVENUE
STATE PLAT 12 AMENDED, BOOK 69, PAGE 38
AND PART OF SECTION 16, T1N, RE G.&S.R.B.& M
MARICOPA COUNTY, ARIZONA

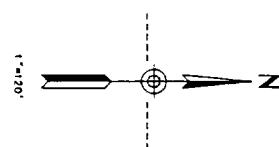
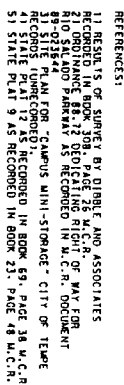
[illegible]

EXHIBIT E-1



THIS SURVEY WAS PERFORMED DURING THE MONTH OF AUGUST, 2000. ALL THE MONUMENTS SHOWN HAVE BEEN SET.

DEPARTMENT OF HIGHWAYS	
CITY OF TEMPE	
DIVISION OF ENGINEERING	
LA BOR 3002 11/26/64, ARIZONA 15330	
DATE: 5/5/60	PROJECT NO. N/A
DESCRIPTION	
REPAIRS OF SURF A PORTION OF STATE PLAT 12	
SHEET NO. 1	OF 1

EXHIBIT "F"

LEGAL DESCRIPTION PARCEL 3

A portion of the Northwest Quarter of Section 16, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

Commencing at the Center of said Section 16;

Thence North $00^{\circ} 48' 26''$ West along the North/South midsection line of said Section 16, 40.00 feet;

Thence South $89^{\circ} 41' 31''$ West along a line parallel with and 40.00 feet North of the East/West midsection line of said Section 16, 1335.68 feet;

Thence South $89^{\circ} 41' 52''$ West along a line parallel with and 40.00 feet North of the East/West midsection line of said Section 16, 128.32 feet to the Southeast corner of Lot 15, State Plat 12 Amended, according to Book 69 of Maps, Page 38, Maricopa County Recorder; said point also being the Point of Beginning;

Thence continuing South $89^{\circ} 41' 52''$, 499.89 feet to the Southwest corner of Lot 19 of said State Plat 12

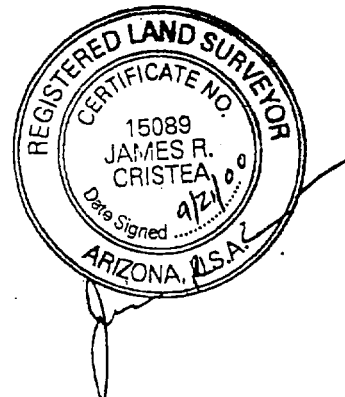
Thence North $00^{\circ} 42' 13''$ West along the West line of said Lot 19, 421.57 feet to a point on the Southerly right of way line of Rio Salado Parkway as described in Document number 89-023644, Maricopa County Recorder;

Thence continuing along said Southerly right of way North $60^{\circ} 12' 06''$ East, 22.65 feet to the beginning of a curve, concave to the South, and having a radius of 889.93 feet and from which beginning a radial line bears South $29^{\circ} 47' 54''$ East;

Thence Easterly and to the right along the arc of said curve and said Southerly right of way, 499.56 feet through a central angle of $32^{\circ} 09' 45''$, and to which point a radial line bears North $2^{\circ} 21' 45''$ East;

Thence departing said curve and said right of way, South $00^{\circ} 40' 29''$ East along the East line of said Lot 15, 547.06 feet to the Point of Beginning.

Said parcel contains 5.86 acres.



LOTS 5 THRU 19 AND PORTIONS OF 2ND AVENUE
STATE PLAT 12 AMENDED, BOOK 69, PAGE 38
AND PART OF SECTION 16, 11N., R4E-G-8 S.R.B. & M.
MARICOPA COUNTY, ARIZONA

10000
JAMES R.
CRISTEA
Date Signed 9/21/10
ARIZONA, U.S.A.

[illegible]

NORTH 1/4, SECTION 16
FROM CITY OF TEMPE
HORIZONTAL CONTROL
FALLS IN TOWN LAKE



REFERENCES:

- 1) RESULTS OF SURVEY BY DIBLE AND ASSOCIATES RECORDED IN BOOK 308, PAGE 28 M.C.R.
- 2) PROGNAMINE 88-72 DECLARING RIGHT OF WAY FOR STATE PLANT 12 AS RECORDED IN M.C.R. DOCUMENT NO. 34-000 PARAWAY AS RECORDED IN M.C.R.
- 3) SITE PLAN FOR "CAMPUS WINE-STORAGE" CITY OF TEMPE RECORDED UNDER CORCORAN.
- 4) STATE PLANT 12 AS RECORDED IN BOOK 23, PAGE 38 M.C.R.
- 5) STATE PLANT 9 AS RECORDED IN BOOK 63, PAGE 48 M.C.R.

THIS SURVEY WAS PERFORMED DURING THE MONTH OF AUGUST, 2000. ALL THE MONUMENTS SHOWN HAVE BEEN SET.

DEPARTMENT OF PUBLIC WORKS CITY OF TEMPE DIVISION OF ENGINEERING		PLANNING DEPT. 1000 N. GAVINSON AVE. PHOENIX, ARIZONA 85003
SPECIALIST DEPARTMENT DESIGN, JRC DESIGN, JRC MATERIALS MATERIALS	REQUALIFICATION OF SURVEY STATION OF STATE PLAT 12	DATE 9/5/00 PROJECT NO. N/A SHEET 1 OF 1

EXHIBIT "G"

SCHEDULE B

FIRST AMENDED
Commitment No. 257-740-1273178

PART TWO:

1. Taxes for the full year of 2000. (The first half is due October 1, 2000 and is delinquent November 1, 2000. The second half is due March 1, 2001 and is delinquent May 1, 2001.)
2. The liabilities and obligations imposed upon said land by reason of: (a) inclusion thereof within the boundaries of the Salt River Project Agricultural Improvement and Power District; (b) membership of the owner thereof in the Salt River Valley Water Users' Association, an Arizona corporation and (c) the terms of any Water Right Application made under the reclamation laws of the United States for the purpose of obtaining water rights for said land.
3. The right to enter upon said land and prospect for and remove all coal, oil, gas, minerals or other substances, as reserved in the Patent to said land.
4. Easements, restrictions, reservations, conditions and set-back lines as set forth on the plat recorded in Book 69 of Maps, Page 38, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
5. Covenants, Conditions, and Restrictions in the document recorded Docket 8273, Page 725 and as 85-57908 of Official Records, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes.

(Affects Lot No. 10)
6. An easement for irrigation ditches and incidental purposes, recorded as Docket 8273, Page 725 and in 85-57908 of Official Records.

(Affects Lot No. 10)
7. An easement for electric lines and incidental purposes, recorded as 87-39932 of Official Records.

End of Schedule B

EXHIBIT "H"

SCHEDULE B

FIRST AMENDED
Commitment No. 257-740-1273176

PART TWO:

1. Taxes for the full year of 2000. (The first half is due October 1, 2000 and is delinquent November 1, 2000. The second half is due March 1, 2001 and is delinquent May 1, 2001.)
2. The liabilities and obligations imposed upon said land by reason of: (a) inclusion thereof within the boundaries of the Salt River Project Agricultural Improvement and Power District; (b) membership of the owner thereof in the Salt River Valley Water Users' Association, an Arizona corporation and (c) the terms of any Water Right Application made under the reclamation laws of the United States for the purpose of obtaining water rights for said land.
3. The right to prospect for, mine and remove all coal, minerals or other substances as reserved in the Patent from the State of Arizona.
4. Easements, restrictions, reservations, conditions and set-back lines as set forth on the plat recorded in Book 69 of Maps, Page 38, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
5. Covenants, Conditions, and Restrictions in the document recorded as Docket 8273, Page 725 and as 85-057908 of Official Records, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes.
6. An easement for irrigation ditches and incidental purposes, recorded as Docket 8273, Page 725 and as 85-057908 of Official Records.
7. An easement for electric lines and incidental purposes, recorded as 87-039932 of Official Records.
8. All matters shown on Results of Survey recorded in Book 308 of Maps, Page 26.

End of Schedule B

EXHIBIT "I"

SCHEDULE B

Commitment No. 257-740-1307969

PART TWO:

1. The liabilities and obligations imposed upon said land by reason of: (a) inclusion thereof within the boundaries of the Salt River Project Agricultural Improvement and Power District; (b) membership of the owner thereof in the Salt River Valley Water Users' Association, an Arizona corporation and (c) the terms of any Water Right Application made under the reclamation laws of the United States for the purpose of obtaining water rights for said land.
2. The right to prospect for, mine and remove all coal, minerals or other substances, as reserved in the Patent from the State of Arizona.
3. An easement for electric transmission lines and incidental purposes, recorded as Docket 4102, Page 198.
4. All matters shown on Results of Survey recorded in Book 308 of Maps, Page 26.

End of Schedule B

When recorded, return to:

SPECIAL WARRANTY DEED

("Grantor"), for good and valuable consideration, the receipt and sufficiency of which is acknowledged, hereby grants, sells, transfers and conveys to _____ ("Grantee"), its successors and assigns, the Property as defined below, including without limitation the real property described on Exhibit "A" attached hereto and incorporated herein by this reference, situated in Maricopa County, Arizona;

TOGETHER WITH, if any, all buildings, structures and improvements located on or forming a part of such real property and all fixtures and facilities permanently affixed or attached to such buildings, structures or improvements, or otherwise attached to such real property;

AND TOGETHER WITH, all right, title and interest of Grantor in and to gas, oil and mineral rights, water rights, tenements, hereditaments, easements, appurtenances and other rights in any way belonging thereto or associated therewith and the reversions and remainders thereof (all of the foregoing described in all the paragraphs above being referred to herein as the "Property");

AND GRANTOR HEREBY BINDS ITSELF, and its successors and assigns, subject to zoning, all matters shown on Exhibit "B" attached hereto and incorporated herein by this reference and any matter an accurate survey would reflect, to warrant and forever defend the title to the Property unto Grantee, its successors and assigns, from and against only Grantor's prior acts affecting title, and none other.

To be effective as of the date of recording hereof.

_____ (Grantor)

EXHIBIT "J"

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2001, by _____, its _____, on behalf of such entity as Grantor.

[Notary Stamp/Seal and
Commission Expiration Date]

Notary Public

Special Warranty Deed

Page Two of Two

EXHIBIT “K”

Overflight Summary – Supplied to Buyer